IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

CWP No.17003 of 2006

Date of Decision: 1.12.2006

Joginder Singh Kanwar .....Petitioner

Versus

State of Punjab and others .....Respondents

CORAM:- HON'BLE MR.JUSTICE J. S. KEHAR
HON'BLE MR.JUSTICE S. D. ANAND

Present: Mr.KS Dadwal, Advocate
for the petitioner.

Mr.BS Chahal, AAG Punjab.

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S. D. ANAND, J.

1. Through the present writ petition, the petitioner impugns the transfer orders (Annexure P3) vide which he was transferred from Ferozepur to Mansa. He calls into the question the validity of the impugned transfer orders on the plea that those are violative of the policy instructions providing, inter alia, that the employees who are retiring within the coming two years ought to be protected from transfer and also on the plea of his ill-health for which he is under treatment at Mohali. The petitioner also put forward a plea of protection, in the context, as a couple case inasmuch as his wife is serving as a Teacher in a Government School at Chandigarh. Reliance, in the context of the former contention, is placed upon a Division

Bench ruling of this Court reported as **Dr.Dev Parkash Chugh Versus State of Punjab and others, 2005(4) SCT 726.**

2. The petitioner, who was inducted into the employment of the respondents on the 19th day of April, 1968 and is presently posted as Inspector, Grade-I, is due to retire on superannuation on 30.4.2008. On the disbanding of the Flying Squad attached to the Food and Supplies Minister, the petitioner (who was a member of the Flying Squad) was initially transferred to Ferozepur vide order dated 22.8.2006 (Annexure P2). From there, he was transferred vide order dated 31.8.2006 to Mansa (Annexure P3).

3. Respondents No.1 to 3 have, in a joint written statement, resisted the plea put forward by the petitioner by averring that the ill-health is only a facade presently put forward by the petitioner which he never urged throughout his tenure of more than around nine years in District Ropar. The further averment, in the context, is that the alleged ill-health was never brought to the notice of the Department even while the petitioner was performing a constant journey – based flying squad duty for a period of about 3 years and 5 months. He had undertaken journey covering 1,38,840 kms during his posting in Central Flying Squad.

4. We have heard Mr.KS Dadwal, learned counsel for the petitioner and Mr.BS Chahal, learned AAG Punjab for the respondents.

5. Transfer of employees is, by the very nature of things, an unavoidable incident of Government employment. The assumption would invariably be that an order of transfer has been passed in public interest or in the exigency of service. It would, however, be an altogether different things if the affected employees were to aver and prove a bias on the part of

the competent Authority in the context. In the present case, no bias/malafides are averred against the Competent Authority.

6. Though the factum of transfer policy relied upon by the petitioner is not disputed, it must be noticed that it (transfer policy) is only directory in nature. Though the Government would be expected to follow it in routine, an understandable deviation therefrom cannot be requested to be invalidated if the same had been ordered for sufficient reasons or in the paramount public interest. That is precisely what was held by a Division Bench of this Court in the case of **Dr.Dev Parkash Chugh (supra)**. In the present case, there is no denial of the fact that the petitioner has been in Ropar District for a period of more than nine years at a stretch. The mere fact, thus, that he came to be initially transferred from Ferozepur, and thereafter, to Mansa would not at all indicate that the transfer is not in public interest or that it has not been ordered by the Competent Authority in exigencies of public service. All that the medical documentation produced by the petitioner on record (by means of CM No.20034 and along with the application) would indicate is that he is a diabetic. It is not an ailment which can be treated only at any particular place. The precise averment in the course of the replication (to the effect that the fact of illness was never intimated to the Department earlier) has not been categorically denied. Even otherwise, it would not be out of place to mention that some of the medical prescriptions pertain to the post – Annexure P3 period.

7. Further more, in view of the fact that the petitioner has been posted in District Ropar for more than nine years at a stretch, he cannot be heard to put forward a plea of 'couple case'. The present is not a case where he has only few months to superannuate. There is no policy which would

compulsively ordain the Authorities to post an employee retiring within the indicated period on a particular place under all circumstances. Individual interest must make way to public interest and exigency of service.

8. In view of the above discussion, we do not find any merit in the petition. Dismissed.

(S. D. ANAND)
JUDGE

(J. S. KHEHAR)
JUDGE

December 1, 2006
SRM